Testimony of Steve Ellis
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before the
Subcommittee on Fisheries and Oceans
Committee on Resources
regarding
The Coastal Barrier Resources System and H.R. 139, H.R. 479, H.R. 1656, H.R. 3280, and H.R. 4165

April 6, 2006

Good afternoon, Chairman Gilchrest, Ranking Member Pallone, members of the Subcommittee. I am Steve Ellis, Vice President of Programs at Taxpayers for Common Sense (TCS) Action, a national, non-partisan budget watchdog. Thank you for inviting me here today to testify on five bills that would remove land from the Coastal Barrier Resources System (CBRS) and about "the potential financial impact to the Federal Flood Insurance Program and how removing [the land] would affect the long-term integrity of the Coastal Barrier Resources System."[1]

As you know, the CBRS is made up of 1,326,000 acres of coastal barriers along the Atlantic and Gulf Coasts, the Great Lakes, Puerto Rico, and the Virgin Islands.[2] These areas were undeveloped when Congress set up the system in 1982 and expanded it in 1990. I like to call the CBRS an "unprogram" – the government does not own the land, and does not tell anyone what they can and cannot do on the land. CBRS just denies any federal subsidies for developing the land. Do as you like, just not on our dime.

The development criteria and most of the technical facets of the CBRS have been tested over the years. The criteria determining what is undeveloped require less than one structure per five acres of land above the mean high tide line and that the area does not have a full compliment of infrastructure for each lot, including a road (with reinforced roadbed), wastewater disposal, electric service, and fresh water supply. The definition of "developed" was clearly articulated and has since been codified.[3] "Going" to develop, or plans, or permits, do not meet the development criteria. Only the reality on the ground determines what is really developed. Property that existed in the unit at time of

[1] Rep. Wayne T. Gilchrest, Chairman, Subcommittee on Fisheries and Oceans March 27, 2006 letter to Stephen Ellis, Taxpayers for Common Sense.
[2] U.S. Fish and Wildlife Service. "The Coastal Barrier Resources Act: Harnessing the Power of Market Forces to Conserve America's Coasts and Save Taxpyer's Money." August 2002. Page 2.
[3] Coastal Barrier Resources Act. 16 U.S.C. 3503.

designation is "grandfathered" and can receive flood insurance and other subsidies, although new construction and significant reconstruction cannot receive federal subsidies.

After seeing so many technical correction bills over the years, I guess I shouldn't be surprised to sitting here talking about removing land from the system in light of all the recent events. We just experienced the most active and one of the most destructive hurricane seasons on record. The last storm, Zeta, stretched the 2005 season into 2006. We are less than two months away from the start of the next hurricane season in which experts already predict above average activity for this year and the next several years.[4]

Storms last year were as destructive to the flood insurance system as they were to lives and property. Right now, the federal flood insurance system, which takes in $2 billion annually in policy premiums, owes the federal taxpayer well over $20 billion. This "borrowed" money is unlikely to ever be repaid. It would take more than 10 years without a claim and without interest to fill in the existing debt hole.

A 2002 U.S. Fish and Wildlife Service report estimated that that the CBRS will save more than $1.2 billion by 2010.[5] Funny enough, the denial of flood insurance was not included in that total because the program was supposedly "self-sufficient."[6] Well, I guess that is settled. Flood insurance is highly subsidized and has been a failure. In fact, efforts are underway in both the House and the Senate to fundamentally alter flood insurance; actuarial rates and denial of insurance for second and vacation homes are two of the options on the table.

A little clarity about the Coastal Barrier Resources System. There were three goals of the law: reduce risk to people and property; not encourage development in ecologically sensitive coastal barrier islands; and save taxpayers the expense of building and rebuilding in high-risk areas.

People seem to operate under the fiction that the CBRS tells people what they can and cannot do with their land. This is absolutely not the case. President Reagan said it best, pointing out that the Coastal Barrier Resources Act "simply adopts the sensible approach that risk associated with new private development in these sensitive areas should be borne by the private sector, not underwritten by the American taxpayer." In other words, the program is about personal responsibility – it simply says if you want to build in harm's way, do not ask Uncle Sam to bail you out when the inevitable disaster strikes.

Taxpayers for Common Sense Action has concerns about all the bills being considered at today's hearing. We have watched as the program has been nickled and dimed to death

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[4] Philip J. Klotzbach and William M. Gray. Colorado State University. "EXTENDED RANGE FORECAST OF ATLANTIC SEASONAL HURRICANE ACTIVITY AND U.S. LANDFALL STRIKE PROBABILITY FOR 2006". December 6, 2005. Available at http://hurricane.atmos.colostate.edu/forecasts/2005/dec2005/

[5] U.S. Fish and Wildlife Service. "The Coastal Barrier Resources Act: Harnessing the Power of Market Forces to Conserve America's Coasts and Save Taxpayer's Money." August 2002. Page 2.

[6] *Ibid*. Page 28.

over the years as so-called technical corrections have exposed taxpayers across the country to greater risks. But the bills we are discussing today would increase federal subsidies – these are not simple cuts to the CBRS, these are deep wounds. It has been more than 15 years since Congress added land to the system. As this is settled law, the bar should be very high for removal. The true "technical" corrections are largely behind us, these bills basically represent "subsidy grabs."

H.R. 138. This bill would remove large areas from GA-06P, a unit overlapping Jekyll Island State Park. This area is an anomaly; the state has allowed development of up to 35% of the park's land area. Much of the development pre-existed the CBRS designation and receives flood insurance and other subsidies on a grandfather status. However, the park's unique status was understood and Congress made this designation with eyes wide open – the 1978 Department of Interior report on coastal barriers described the development in the park.[7] Additionally, the structures are obvious on the map Congress used to enact the CBRS unit. TCS Action does not see any merit in removing any areas – residential or commercial - from the CBRS unit that were properly included at the time. Proposals to remove undeveloped acreage from CBRS so the Jekyll Island Authority can use the full 35% allotment for development are preposterous. They can develop and redevelop all they want, but my Uncle Sid in Omaha should not have to pay for it.

H.R. 479. This bill involves FL-95P and would remove a 6.4-acre area within the boundaries of Grayton Beach State Park. This inholding, which is fully surrounded by the park, includes four structures on ten lots. This area, considered with the state park, clearly does not meet the density criteria and should not be removed. TCS Action analysis of the underlying claims for removal indicate they do not merit a technical correction. Removing inholdings of private property within OPAs would be precedent-setting and could have significant long-term impacts on the CBRS system. The Fish and Wildlife Service has previously supported removal of private land adjacent to OPAs, but to my knowledge, has not supported removing inholdings.

H.R. 1656. This bill would remove 1,260 acres from T-10, a unit bordering Padre Island National Seashore that was first created in 1982. Those advocating removal argue that the intention was always to develop this area as a gateway to the park, pointing to discussions and legislative history around easements and recreational development considerations. Even if this is the case, the point is irrelevant for two reasons. One, obviously this discussion was held twenty years before the creation of the CBRS and it is clear that Congress made an affirmative action in 1982 to include this area in the CBRS as an undeveloped coastal barrier, which it clearly is. Furthermore, the advocates for removal point to Congressional intent in 1962, ignoring more recent Congressional intent in 1982. Second, nothing precludes development in this area. In fact, the landowner clearly articulated that he was going to develop whether it comes out of the system or not – he

[7] U.S. Department of the Interior. "Report of the Barrier Island Work Group." December 18, 1978. Page 55.

just wants the federal subsidies.[8] There is absolutely no reason to remove this land from CBRS and it would be precedent-setting to remove it simply because individuals would like to receive federal subsidies for high-risk development.

H.R. 3280. This bill tries to remove the flood insurance and subsidy prohibitions from CBRS units P-30 and FL-92. P-30 was created in 1982 and FL-92 in 1990. Both of these units easily met the development criteria for density and infrastructure measures. The 100 structures on more than 1,600 acres of Cape San Blas fastland was clearly below the 1 structure per five acres threshold and clearly indicates that P-30 was not developed when included in the system in 1982. After appropriately removing intensely developed areas from consideration, the rest of Indian Peninsula was considered and included as unit FL-92. A full complement of infrastructure was not present in either case. Plans and permits to develop or to build infrastructure are not development - period. I know there has been significant development subsequent to P-30 and FL-92's inclusion in the CBRS. While the development may disappoint some – it clearly underscores President Reagan's that point "risk associated with new private development in these sensitive areas should be borne by the private sector, not underwritten by the American taxpayer." We believe it should continue that way. This bill will create a bizarre precedent, in effect creating an impotent CBRS unit – remaining on the map but without any of the subsidy prohibitions. Further, removing subsidy prohibitions simply because the unit has experienced development defeats a key program purpose.

H.R. 4165. According to maps drafted by the Fish and Wildlife Service, this bill would remove 48 acres of private land from and add 65 acres of conservation land to FL-64P, an Otherwise Protected Area overlapping Clam Pass Conservation Area in Collier County, FL. Of the bunch, this is the most difficult bill for TCS Action. When the unit was first created there were apparently 16 structures on an area the map depicted to be wetland. This is private land adjacent to, but not surrounded by, public land. Since we are in opening week, I will put it in baseball terms. In baseball, the tie goes to the runner. In that sense, we will always side with the Coastal Barrier Resources System unless faced with incontrovertible evidence of a mistake. We do not have that here, but in comparison to the merits – or more like lack thereof – of the bills being considered today, this is by far the most innocuous of the five.

While each of these bills raise different questions and concerns, it is clear that all of them would expose federal taxpayers to greater risks and costs by subsidizing high risk development. Last year the flood insurance program lost more money than it had in its previous history combined. Adding more high risk properties to the program's portfolio will undercut efforts to make it actuarially sound. That makes no sense.

These bills will have differing effects on the Coastal Barrier Resources System. H.R. 138, H.R. 479, H.R. 1656, and H.R. 3280 would all set terrible precedents for the system. Recent technical corrections, although concerning, have been about mapping

[8] Amanda Nelson. *Corpus Christi Caller-Times*. "Developer Seeks to Lift Restrictions." November 17, 2004.

discrepancies and issues dealing mostly with pen lines on paper maps. Each of these bills are about removing rightfully included land from the system so the federal taxpayer can subsidize development. None of these bill's supporters are shy about the fact that they plan to develop these areas more intensely. This is precisely the wrong time to be adding subsidy fuel to the development fire on the coast. These bills should be rejected.

Thank you Mr. Chairman for inviting me here today. Taxpayers for Common Sense Action strongly supports the Coastal Barrier Resources System, and rather than cut whole sections out of the program, TCS wants to find ways to expand the system and the concept of denying subsidies for high risk development in other areas of the country. Thanks again for having me and I would be happy to take any questions you might have.